IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

S.T.Rev.No.221 of 2005

AGAINST THE ORDER IN T.A.NO.357/2001 DATED 29.6.2004 OF THE KERALA SALES-TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-I,ERNAKULAM

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PETITIONER:-

PREMIER TYRES LIMITED,
KALAMASSERY.

BY ADV. SRI.M.PATHROS MATTHAI (SR.)
SRI.JOHN RAMESH K.I.JOHN

RESPONDENT:-

STATE OF KERALA REPRESENTED BY SECRETARY,
(TAXES) COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASHOKAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

S.T.Rev.No. 221 of 2005

Dated, this the 30th day of May, 2007

ORDER

H.L.Dattu,C.J.

In this revision petition, we are concerned with the assessment year 1995-96. The commodity in dispute is Nylon Tyre cord fabric. The assessee, while filing its annual return, had claimed exemption since, according to the assessee, the commodity in which it is dealing would fall under Entry 11 of Third Schedule to the Kerala General Sales Tax Act ("KGST Act" for short). It is apropos to notice here itself that the commodity falling under Entry 11 of Third Schedule to the Act is exempt from payment of tax by virtue of the provisions of Section 9 of the Act. The assessing authority has rejected the claim and it is of the view that it is unscheduled goods and required to be taxed under Entry 156 of First Schedule to the Act. This view of the assessing authority is accepted by the first appellate authority. The Tribunal, to say the least, has most mechanically accepted the views of the assessing authority and that of the appellate authority without there being any discussion whatsoever. Aggrieved by the said order of the Tribunal, the assessee is before us in this revision.

2. Sri.Pathros Matthai, learned Senior Counsel appearing for the assessee would submit that the Tribunal without considering the issues, i.e., whether the Nylon Tyre cord fabric is an item coming under Entry 11 of Third Schedule to the Act and, therefore, exempt under Section 9 of the Act and whether the assessee is liable to pay interest under Section 23(3) of the Act, could not have mechanically confirmed the orders of the assessing authority and the appellate authority for the assessment year 1995-96.

3. Sri.V.V.Ashokan, learned Special Government Pleader (Taxes) sought to justify the orders passed by the Tribunal, may be knowing fully well that the said order can never be justified.

4. We have gone through the orders passed by the Tribunal. The Tribunal merely extracts whatever that has been said by the assessing authority and the first appellate authority. Without any discussion whatsoever, it mechanically proceeds to confirm the reasoning and conclusions reached by the assessing authority and the first appellate authority. In our opinion, this is not the way in which the Tribunal is required to decide a statutory appeal filed by an aggrieved person/assessee. Apart from this, the Tribunal is the last fact finding authority and the Tribunal, especially when an issue arises for consideration about exigibility or otherwise of an article/commodity it is required and expected to apply its mind and say one way or the other, whether the particular commodity comes under any one of the entries under the Schedule to the Act. In the instant case, as we have already stated, the Tribunal has not even considered the primary issue that was raised by the assessee. In view of all these, we are of the firm view that the order passed by the Tribunal is to be interfered with and the matter requires to be remitted back to the Tribunal for a fresh decision in accordance with law and after affording an opportunity of hearing to both sides. Accordingly, the following:

Order

(i) The revision petition is allowed.

(ii) The orders passed by the Tribunal for the assessment year 1995-96 is set aside.

(iii) A direction is issued to the Tribunal to decide the issue whether the Nylon Tyre cord fabric is an item falling under Entry 11 of the Third Schedule to the K.G.S.T.Act and whether the petitioner is liable to pay interest under Section 23(3) of the Act in view of the orders of deferment passed by the Board for Industrial Financial

Reconstruction (BIFR). While answering the aforesaid issues, the Tribunal shall afford an opportunity of hearing to both sides. All other contentions are left open. Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/DK.